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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

MARINE HARBOR PROPERTIES, INC.,
Petitioner,

AGAINST

MANUFACTURERS' TRUST COMPANY, *et al.*,
Respondents.

No. 24.

Petition to Have This Honorable Court Reconsider Its Decision Herein and Upon Such Reconsideration Order That This Case Be Remanded to the District Court Where the Debtor May Amend Its Petition to Allege and Prove a Proper Case in Accordance With the Opinion of This Honorable Court, or in the Alternative, That the Mandate of This Court and the Order to Be Entered Thereon Be So Worded As to Provide an Opportunity to the Debtor to File An Amended Petition for Reorganization in the District Court, and That the Costs Herein Be Allowed to Abide the Event.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Marine Harbor Properties, Inc., hereinafter called the debtor, respectfully shows:

On September 17, 1941, the debtor filed a petition for reorganization under Chapter X of the Bankruptcy Act. This petition was approved by an *ex parte* order entered in the District Court. No answer to such petition has ever been filed.

Shortly thereafter, the predecessor-in-interest of the Manufacturers' Trust Company, the present respondent, moved to vacate this *ex parte* order, based upon affidavit proof only. This motion was opposed by the debtor, but again, on affidavit proof only. On this proof, the respondent's motion was denied. The District Court found that, in its opinion, the debtor had shown good faith and sufficient need for relief under Chapter X.

An appeal was taken to the Circuit Court of Appeals where the decision of the District Court was reversed on the authority of that Circuit Court's previous holding in *Brooklyn Trust Company* v. *Rembaugh*, 110 Fed. (2) 838.

In the appeal to this Court, the *Rembaugh* case, *supra*, was distinctly disapproved, but affirmance of the decision of the Circuit Court was nevertheless had for the reason that, in the opinion of this honorable Court, the debtor had insufficiently shown its good faith and need for relief. Only in this Court, and here for the first time, was it pointed out wherein and why the debtor had failed to make a sufficient showing on these two issues.

A mandate is to be issued out of this Court in accordance with its opinion and an order is to be entered thereon. It is expected that in accordance with this opinion, the petition of the debtor will be dismissed.

Petitioner respectfully states that the insufficiency of its showing in the District Court on the issues of good faith and need for relief was not the result of carelessness, neglect, or some ulterior motive. The insufficiency was due solely to the fact that this honorable Court had not yet indicated in this, or any other case, the extent and

nature of the burden which debtors must discharge on the issues of good faith and need for relief. Both the District Court and the Circuit Court of Appeals were unable to point out wherein and why the debtor's petition for reorganization was insufficient because of the silence of the law on this subject. Now, however, in the light that has been shed on this subject through the decision and opinion of this Court, it is to be expected that the lower Courts as well as debtors petitioning for reorganization will be better guided.

In the event, however, that the debtor's petition herein is dismissed, as is to be presumed from the decision of this Court, it would necessarily bar the debtor from ever reorganizing in the Federal Court, even though it can sufficiently demonstrate its good faith and need for relief. This would unduly penalize the debtor, especially because the debtor presently possesses knowledge of specific facts which it believes will clearly indicate to the Court its good faith and need for relief under Chapter X. The debtor believes it can show wherein and why none of the prior proceedings will best subserve the interests of creditors or stockholders. The debtor also believes that it can make a sufficient showing that the necessary contribution it may be required to make to the interests of creditors is based on solid fact and not mere hope.

Until now, however, there has been no opportunity to have in the District Court a direct and fair test of these issues in accordance with the opinion of this honorable Court. The previous attack on the debtor's petition, as the history of this case indicates, was based upon and sustained by the Circuit Court's holding in the *Rembaugh* case, *supra*. Since the rationale of the *Rembaugh* case has been disapproved here, and neither the District Court, nor the debtor had the benefit of the opinion of this hon-

orable Court by which to be guided on the issues of good faith and need for relief, the debtor feels justified in asking this Court for an opportunity to amend its petition, so that it may allege and prove a proper case.

This opportunity is desired because the debtor feels it can demonstrate that in many ways, the prior proceedings, both the foreclosure and Schackno, withhold from and/or deny to creditors or stockholders the benefits, advantages or protections which Chapter X affords. When these allegations are adequately explained and a full hearing has been had thereon, it will clearly indicate that reorganization of the debtor cannot possibly be effected in any other Court or proceeding except in the Federal Court and under Chapter X.

The necessary contribution which the debtor may be called upon to make in accordance with the principles of this Court as laid down in *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, is available. The present stockholders are also the sole stockholders in other corporations whose equities are substantial. These equities will, if necessary, be pledged, assigned or transferred in such manner as the Court may require to insure to creditors that a contribution will be forthcoming from the debtor whenever a plan of reorganization has been adopted that is fair, equitable, and feasible.

WHEREFORE, the debtor respectfully prays that this honorable Court reconsider its decision herein, and upon such reconsideration, order that this case be remanded to the District Court where the debtor may amend its petition to allege and prove a proper case in accordance with the opinion of this honorable Court, or in the alternative that the mandate of this Court and the order to be entered thereon be so worded as to provide an oppor-

tunity to the debtor to file an amended petition for reorganization in the District Court and that the costs herein be allowed to abide the event.

Dated, November 30, 1942.

FRIEDLAND & FRIEDLAND,
Counsel for Petitioner,
Marine Harbor Properties, Inc.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.:

SOL FRIEDLAND and ARTHUR E. FRIEDLAND, being duly sworn, depose and say, that they are counsel for the petitioner named in the foregoing petition. That they prepared the same and that the allegations thereof are true as they thoroughly believe.

SOL FRIEDLAND,
ARTHUR E. FRIEDLAND.

Subscribed and sworn to before me
this 30th day of November, 1942.

SYLVIA LICHTENSTEIN,
Commissioner of Deeds,
New York City.
N. Y. County Clerk's #157.
Commission Expires December 23, 1943.